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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Franklin Public School District)
Franklin, Wisconsin)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-168087

CC Docket No. 96-45

CC Docket No. 97-21

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ORDER**Adopted: November 2, 2001****Released: November 5, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division is a Request for Review by Franklin Public Schools (Franklin), Franklin, Wisconsin.¹ Franklin seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying a Funding Year 3 request for discounted Centrex telecommunications service under the schools and libraries universal service mechanism.² For the reasons discussed, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all

¹ Letter from Kaye Hernon, Franklin Public School District, to Federal Communications Commission, filed May 7, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. The Commission's regulations require applicants to certify on their FCC Forms 471 either that the schools or libraries are covered by a technology plan or that they are requesting only basic local and long distance telephone service, for which no technology plan is needed.⁷ Applicants certifying that they are covered by a technology plan must also certify that the plan either has been or will be certified by their State, the Administrator, or an independent entity approved by the Commission.⁸ The plan must be in place at the time the application is filed and must demonstrate how the school or library intends to use its discounted services and how these services will be integrated into the overall curriculum, in order to help ensure that the applicant is making a "bona fide request" for services, as required by statute.⁹ With regard to the "basic local and long distance telephone service only" certification, applicants are further informed that "basic voice telephone service" does not include Centrex telephone service.¹⁰ Thus, applicants requesting Centrex service must have a technology plan that meets the requirements of the Commission's rules.¹¹

⁵ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S.Ct. 2237 (June 5, 2000), *dismissed, GTE Service Corp. v. FCC*, 121 S.Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁷ FCC Form 471, Block 6, Item 26.

⁸ 47 C.F.R. § 54.504(b)(2)(vii).

⁹ FCC Form 471, Block 6, Item 26; *Universal Service Order*, 12 FCC Rcd at 9076-77; 47 U.S.C. § 254(h)(1)(B); *see also* SLD web site, "Step 2: Developing the Technology Plan," <<http://www.sl.universalservice.org/apply/step2.asp>>.

¹⁰ *See* SLD web site, Eligible Services List, <http://www.sl.universalservice.org/data/pdf/EligibleServicesList_101701.pdf> (defining "Basic Telephone Service"); *see also Request for Review by United Talmudical Academy, Federal-State Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-105791, CC Dockets No. 96-45 and 97-21, DA 01-2457 (Com. Car. Bur. rel. October 23, 2001).

¹¹ SLD web site, Eligible Services List, <http://www.sl.universalservice.org/data/pdf/EligibleServicesList_101701.pdf> ("Applicants requesting discounts on Centrex would need to have technology plans.")

4. On July 21, 2000, SLD issued a Funding Commitment Decision Letter denying Funding Request Number (FRN) 338410 of Franklin's Funding Year 3 application, on the grounds that Franklin did not have a technology plan and FRN 338410 requested services for which a technology plan was required.¹² Franklin appealed, conceding that FRN 338410 included a request for Centrex services that required a technology plan, and requesting that FRN 338410 be amended to eliminate that portion of the request related to Centrex.¹³ SLD denied the appeal, stating that modifications to the application cannot be made once the application is reviewed unless the alleged error is the fault of SLD.¹⁴ Franklin then filed the pending Request for Review.

5. After reviewing the record, we affirm SLD's denial of funding of Franklin's FRN 338410. As noted above, applications requesting discounted Centrex service must have a technology plan at the time the application is filed.¹⁵ The record demonstrates that, during SLD's application review, SLD contacted Franklin, provided Franklin an opportunity to demonstrate that it had such a plan, and determined that Franklin did not, in fact, have a technology plan that would support FRN 338410.¹⁶ The funding request was therefore correctly denied.

6. Franklin asserts in its Request for Review that it now has a technology plan and has obtained State approval of the plan.¹⁷ Franklin asserts that FRN 338410 should therefore be fully funded.¹⁸ However, the fact that it has a technology plan now, does not satisfy the program requirement that Franklin have a technology plan in place at the time of its application. Therefore, we find no basis for granting Franklin's Request for Review.

¹² Letter from Schools and Libraries Division, Universal Service Administrative Company, to James Milzer, Franklin Public School District, dated July 21, 2000 (Funding Commitment Decision Letter).

¹³ Letter from Kaye Hernon, Franklin Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed August 17, 2000, at 1.

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to James Milzer, Franklin Public School District, dated April 27, 2001, at 1.

¹⁵ *See supra*, para. 3.

¹⁶ *See* Universal Service Administrative Company, Schools and Libraries Division, PIA Review Contact Report, Franklin Public Schools, February 24, 2000 (indicating that applicant was contacted during PIA Review and stated that it did not have a technology plan); *see also* Request for Review, at 1.

¹⁷ Request for Review, at 1.

¹⁸ *Id.* at 2.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Franklin Public Schools, Franklin, Wisconsin, on May 7, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau